INDEX

	Page
ARGUMENT	1
CONCLUSION	19

CITATIONS

CASES:

Carpenters Union v. *Ritter's Cafe*, 315 U.S. 769	13
Electrical Workers (General Electric) v. *NLRB*, 366 U.S. 667	5
Food Employees v. *Logan Valley Plaza*, 391 U.S. 308	14
Grain Elevator, Flour & Feed Mill W., ILA Local 418 v. *NLRB*, 376 F.2d 774 (C.A.D.C.), cert. denied 389 U.S. 932	6
IBEW, *et al*, 150 NLRB 363, enforced 350 F.2d 791 (C.A.D.C.)	9
IBEW v. *NLRB*, 341 U.S. 694	13
Longshoremen v. *Adriane Co.*, 397 U.S. 195	3
Madden v. *Grain Elevator Flour & Feed Mill Wkrs., etc.* 334 F.2d 1014 (C.A.7), cert. denied 379 U.S. 967	6, 8
Motor Coach Employees v. *Lockridge*, 403 U.S. 274	9
NLRB v. *Operating Engineers*, 400 U.S. 297	5, 13
Organization for a Better Austin v. *Keefe*, 402 U.S. 415	17
San Diego Building Trades Council v. *Garmon*, 359 U.S. 236	9, 11, 12
Steelworkers (Carrier Corp.) v. *NLRB*, 376 U.S. 492	5
Teamsters Union v. *Morton*, 377 U.S. 252	10
Thornhill v. *Alabama*, 310 U.S. 88	13, 14, 16

Page

William E. Arnold Co. v. *Carpenters District Council*, —— U.S. ——, 42 U.S.L.Wk. 4754 9

Windward Shipping (London) Ltd. v. *American Radio Ass'n.*, —— U.S. ——, 42 U.S.L.Wk. 4234 ..... 4, 6, 12

STATUTES:

National Labor Relations Act as amended by the Labor Management Relations Act, 29 U.S.C. § 151 *et seq.*:

§ 2(1) 3

§ 2(3) 3

§ 2(5) 3, 6

§ 2(6) 3

§ 8 9

§ 8(b)(4) 4, 5, 6, 8, 9, 10, 11, 13

§ 303 9

MISCELLANEOUS:

Legislative History of the Labor Management Relations Act of 1947 ..... 10, 11

Supreme Court of the United States

October Term, 1973

No. 73-748

AMERICAN RADIO ASSOCIATION, AFL-CIO, *et al.*,
Petitioners,

v.

MOBILE STEAMSHIP ASSOCIATION, INC. AND ROBERT E. MALONE,
Respondents.

On Writ Of Certiorari To The Supreme Court Of Alabama

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

This brief *amcius,* in support of the respondent unions, is filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), a federation of 111 national and international labor unions having a total membership of approximately 13,500,000 working men and women, with the consent of the parties, as provided for in Rule 42 of the Rules of this Court.

ARGUMENT

At pp. 12 to 19 of this brief we develop the argument

that the injunction[1] issued by the Alabama courts can not pass muster under the First Amendment. But we address that constitutional issue only out of an abundance of caution. For, there is a threshold statutory issue presented which requires that the decision below be reversed. As we first show, the National Labor Relations Board, alone, has jurisdiction to secure an injunction against peaceful non-

[1] The operative portions of that injunction prohibit:

"1. Loitering, congregating, or picketing, by standing, walking, marching, sitting, or otherwise, at or near any part of the premises owned, occupied, or used by members of Complainant Mobile Steamship Association, Inc.

"2. In any manner interfering with or obstructing, by words or actions, any person or persons working for or desiring to work for members of Complainant Mobile Steamship Association, Inc.

"3. Interfering with the operations of any member of Complainant Mobile Steamship Association, Inc. in any manner whatsoever.

"4. Picketing or interfering at or near Complainant Mobile Steamship Association, Inc. and its members' premises or premises used by Complainant Mobile Steamship Association's members in a manner calculated to intimidate Complainant Mobile Steamship Association's members' employees or anyone working in association with the Complainant Mobile Steamship Association's members, or any other person entering or leaving or attempting to enter or leave Mobile Steamship Association's members' premises, or calculated to induce any such persons not to report or apply for work at Mobile Steamship Association's members' premises, or any facility used by Mobile Steamship Association's members.

"5. Picketing directed at vessels with whom members of the Mobile Steamship Association, Inc. have contractual relations.

"6. Interfering with the contractual relations existing or to exist between the members of the Mobile Steamship Association, Inc. and companies owning and/or operating vessels calling at the Port of Mobile." (App. pp. 29a-30a.)

obstructive, non-trespassory, picketing and handbilling by a "labor organization" on the ground that the union's purpose is to induce "employees" of "persons" engaged in "commerce" (as those terms are defined in §§ 2(1), (3), (5) & (6) of the National Labor Relations Act) to engage in a secondary boycott.

1 (a). This case grows out of "a labor dispute between [a group of] American unions [representing seamen on American flag vessels] and the operators of the [SS] Aqua Glory [a foreign flag ship]." (App. p. 9a.) To publicize that dispute four members of those Unions picketed and handbilled the Aqua Glory at dockside in Mobile. (App. p. 8a.) While the Unions did not have a primary dispute with the American stevedoring companies that load foreign flag (as well as American) ships the picketing and handbilling did result in a refusal to load the Aqua Glory by American "stevedore workers" employed by the member companies of the Mobile Steamship Association, a "person engaged in commerce," (see *Longshoremen* v. *Ariadne Co.*, 397 U.S. 195). (App. pp. 18a-19a.)

The Supreme Court of Alabama did not purport to define the comparative rights of the parties to the primary dispute (the foreign flag ship, which is not even a party to this cause, and the Unions). And the injunction that was issued (p. 2 n. 1, *supra*) runs in favor of the Association and not the Aqua Glory, and regulates the Association's employer-employee relationships, and not the employer-employee relationship between that foreign flag ship and its crew. Nevertheless the Alabama Supreme Court, while recognizing that "where there is a clearly defined labor dispute affecting commerce the NLRB has jurisdiction preemptive of all courts state and federal," held that:

> "where the dispute is one where commerce, as covered by the federal act, is not involved, and the resulting effect, albeit non-direct, of the dispute immediately endangers the business activities of a large segment of the area's population, we think that it is neither illegal nor improper for the court to take jurisdiction and deal temporarily with the subject matter." (App. p. 16a)

Thus, that court attempted to assimilate the instant case to the line of authority culminating in *Windward Shipping (London) Ltd.* v. *American Radio Ass'n.*, U.S. , 42 U.S.L.Wk. 4234 (Feb. 19, 1974), holding that disputes between American unions and foreign flag ships are not in "commerce" for purposes of the NLRA. That was clear error. For here the controversy before the courts is not the one between the Aqua Glory and the Unions, but one between the Unions, the Association and the Association's employees. All of the parties to that dispute are American and all are in "commerce." Thus, this is a case in which "there is a clearly defined labor dispute affecting commerce [over which] the NLRB has jurisdiction preemptive of all courts state and federal." (Cf. App. p. 16a.[2]) Indeed, this case is indistinguishable from secondary boycott cases over which the Board has exercised jurisdiction.

(b) Section 8(b)(4) of the NLRA provides in pertinent part:

[2] We do not intend to even imply that the Alabama courts would not have the authority to treat with a complaint predicated on the theory that the Unions do not have a right under Alabama law to pursue their primary dispute with a foreign flag ship by picketing and handbilling that ship. We recognize that under *Windward Shipping* the state courts do have jurisdiction to adjudicate the comparative rights implicated by such a complaint. But here the complaining parties are American "persons engaged in commerce," and their complaint raises issues covered by the NLRA.

> "It shall be an unfair labor practice for a labor organization or its agents • • • to induce or encourage any individual employed by any person engaged in commerce • • • to engage in, a strike or a refusal in the course of his employment to • • • transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services • • • where in either case an object thereof is • • • forcing or requiring any person to cease • • • handling, transporting, or otherwise dealing in the products of any other producer, • • • or to cease doing business with any other person • • • *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;"

And in *NLRB* v. *Operating Engineers*, 400 U.S. 297, 302-303, this Court explained:

> "Congressional concern over the involvement of third parties in labor disputes not their own prompted §8(b)(4)(B). This concern was focused on 'secondary boycotts,' which was conceived of as pressure brought to bear, not 'upon the employer who alone is a party [to a dispute], but upon some third party who has no concern in it' with the objective of forcing the third party to bring pressure on the employer to agree to the nion's demands." (footnotes omitted.)[3]

Thus, the issue posed in this proceeding—whether the picketing of one person by a "labor organization" which resulted in a work stoppage by "employees" of a third

[3] Mr. Justice Marshall was also careful to note that not all picketing that "seriously affect[s] neutral third parties" is a violation of §8(b)(4). (*Id.* citing *Steelworkers (Carrier Corp.)* v. *NLRB*, 376 U.S. 492, 502; *Electrical Workers (General Electric)* v. *NLRB*, 366 U.S. 667, 673.)

"person engaged in commerce" should on that account be enjoined—is grist for the Board's mill. Indeed, the only factor that distinguishes this case from any of a hundred NLRB cases under § 8(b)(4) is that the Unions' primary dispute is with a foreign flag ship, and, under *Windward Shipping*, that dispute is, therefore, not in "commerce," for the purposes of the NLRA But, while that factor deprives the Board of authority to determine the rights of the Unions and the ship with regard to their primary dispute which centers on the "maritime operations of [a] foreign vessel" (42 U.S.L.Wk. at 4237), it is an irrelevancy, where as here, resolution of the case turns not on an evaluation of the rights of the Unions and a foreign flag ship but solely on the competing rights of American "labor organizations", "person engaged in commerce" and "employees," all of whom are covered by the NLRA. There is no doubt that § 8(b)(4) has equal application to union conduct which impinges neutral "persons engaged in commerce," whether or not the underlying primary dispute is also covered by the NLRA. That is the plain import of the provision's language which is directed at all the enumerated activities of "labor organizations" (as defined in § 2(5)), and not simply at the secondary ramifications of primary disputes within the Board's reach. And, that, without exception, is the lesson of the cases.

The precedents most closely in point are *Madden* v. *Grain Elevator Flour & Feed Mill Wkrs. etc.*, 334 F.2d 1014 (C.A.7) cert. denied 379 U.S. 967, and *Grain Elevator, Flour & Feed Mill W., ILA Local 418* v. *NLRB*, 376 F.2d 774 (C.A.D.C.), cert. denied 389 U.S. 932, both of which grew out of the same controversy. *Madden* arose on:

> "appeals from the district court brought by the Grain Elevator, Flour and Feed Mill Workers, International Longshoremen Association, Local 418, AFL-CIO, herein designated as the Local, and Seafarers' International Union of North America, herein designated as SIU, respondents, who were also respondents below as named in several petitions filed by Ross M. Madden, Regional Director of the National Labor Relations Board, for and on behalf of said Board, petitioner, for injunctive and other relief. Jurisdiction is based on Section 10(*l*) of the Labor Management Relations Act of 1947, 29 U.S.C.A. § 160(*l*), as amended, alleging violations of the secondary boycott provisions of § 8(b)(4)(i) and (ii) (B) of the Act, by SIU and the Local. Respondents filed an answer which denied that the Board or the district court had jurisdiction and denied various other material allegations of the petition.
>
> "On May 29, 1963, the court issued a temporary restraining order, which in substance enjoined respondents and all members acting in active concert with them from in any manner or by any means including picketing, orders, directions, instructions, requests or appeals inducing or encouraging any employee of Continental Grain Company (herein-after called Continental) to refuse to handle any goods at the port of Chicago, where the object thereof was to force Continental to cease doing business with Upper Lakes Shipping, Ltd., a Canadian corporation (hereinafter called Upper Lakes)." (334 F.2d at 1016).

There the unions argued:

> "that the [District] Court, when entering the temporary injunction on June 14, 1963, made no findings or conclusions sufficient to establish jurisdiction, in view of this statement from Incres SS. Co. v. International Maritime Workers, 372 U.S. 24, 27:

> '• • • The Board's jurisdiction to prevent unfair labor practices, like its jurisdiction to direct elections, is based upon circumstances "affecting commerce," and we have concluded that maritime operations of foreign-flag ships employing alien seamen are not in "commerce" within the meaning of § 2(6), 29 U.S.C. § 152(6).' " (*Id.* at 1019.)

The Seventh Circuit rejected that argument on the ground that:

> "no attempt is being made to regulate or to apply the Act to the 'internal management or affairs' of the Upper Lakes ships, the injunction does not regulate the internal affairs of its ship. No conflict between American and Canadian policies can result from halting an illegal secondary boycott in this country, directed against an American employer by an American labor organization and involving employees working in a domestic plant of the American employer." (*Id.*)

In the companion *NLRB* case, which arose on a petition to review the Board's ultimate finding that a § 8(b)(4) violation had in fact occurred, the unions renewed the argument which had been rejected by the Seventh Circuit, and Judge Leventhal (speaking for himself, then Judge Burger and Judge Danaher) replied by citing and following *Madden*:

> "Petitioner contends that the Board lacked jurisdiction because the subject matter of the primary dispute involves the internal affairs of parties based in Canada. The short answer is that the Board is not here exercising jurisdiction over the Canadian primary dispute, but over secondary activity in this country, 'directed against an American employer by an American labor organization and involving employees working in a domestic plant of the American employer.' " (376 F.2d at 776.)[4]

Thus, there can be no doubt that the Board has the authority to grant relief to American "persons engaged in commerce", such as the Association here, who allege that they are neutrals to a primary dispute (which is not covered by the NLRA), and that the union's method of advancing its interest in that dispute has resulted in a secondary boycott by their American employees.

(c) So far as we are aware, there is no dissent from the proposition that a complaint seeking injunctive relief which in substance charges a union with an arguable violation of § 8 of the NLRA, and which does not rest either on an alleged breach of a collective agreement or on violence by the union, is within the exclusive primary jurisdiction of the NLRB. (*San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236. Cf., *William E. Arnold Co.*, v. *Carpenters District Council*, —— U.S. ——, 42 U.S.L.Wk. 4754, 4755 (May 20, 1974); *Motor Coach Employees* v. *Lockridge*, 403 U.S. 274, 284-285 (opinion of the Court), 325-327 (White, J., dissenting).)

That proposition has special force where the complaint requires an inquiry into the right of a "labor organization" to induce the "employees" of neutral "person engaged in commerce" to refuse to perform services for their employer. For in § 8(b)(4) & § 303 Congress:

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[4] See also *IBEW, et al*, 150 NLRB 363, enforced 350 F.2d 791 (C.A.D.C.), (holding that § 8(b)(4) applies to inducement of a secondary boycott by "labor organizations" growing out of a primary dispute covered by the Railway Labor Act and not the NLRA).

"comprehensively and with great particularity 'describe[d] and condemn[ed] specific union conduct directed to specific objectives.' Carpenters Local 1976 v. Labor Board, 357 US 93, 98,

• • • •

[T]his is [therefore] an area 'of judicial decision within which the policy of the law is so dominated by the sweep of federal statutes that legal relations which they affect must be deemed governed by federal law having its source in those statutes, rather than by local law.' Sola Electric Co. v. Jefferson Electric Co., 317 U.S. 173, 176." *Teamsters Union* v. *Morton*, 377, U.S. 252, 258, 261.

An essential counter in the balance struck by Congress is that those who enjoy the protection of § 8(b)(4) are both limited to the recovery of actual damages (as *Morton* holds (*id.* at 261)), and to securing injunctive relief against secondary conduct through the NLRB.[5]

[5] When the [Taft-Hartley] bill reached the Senate floor, Senator Ball proposed an amendment which would have given "an injured party • • • suffering from a secondary boycott or jurisdictional strike, • • • the right to go directly into a district court and seek injunctive relief." (93 Cong. Rec. 4835; 2 Leg. Hist. of the LMRA of 1947, 1350.) The proponents of this amendment argued that secondary boycotts are so objectionable that the injured person should have "the right to control its own litigation, to hire its own lawyer, to take such steps as it deems proper, and to go into such court as it deems proper to proceed in"; the injured party "should not have to depend • • • upon the judgment of some bureaucrat in whom is lodged the power to determine whether such a course should be followed." (93 Cong. Rec. 4837, 2 Leg. Hist. 1353. See also 93 Cong. Rec. 4835-4836, 4838; 2 Leg. Hist. 1350-1351, 1355.) The opponents contended, on the other hand, that to permit private parties to obtain injunctive relief for alleged unfair labor practices would open the door to the abuses of the labor injunction which led to the enactment of the Norris-LaGuardia Act. (See, e.g., 93 Cong. Rec. 4133, 4839, 4843, 4846; 2 Leg. Hist. 1057, 1356-1357, 1364-1365, 1369.)

Senator Taft, finding "that opposition to restoring the injunctive process even in cases of secondary boycotts and jurisdictional strikes seemed to be so strong," proposed that the language of the Senate bill authorizing the Board alone to obtain injunctive relief be retained, and that the private party be given "the right to sue for damages." (93 Cong. Rec. 4843-4844, 2 Leg. Hist. 1365.) The Ball amendment was thereafter defeated (93 Cong. Rec. 4847, 2 Leg. Hist. 1370), and Senator Taft introduced his substitute, which he explained as follows (93 Cong. Rec. 4858, 2 Leg. Hist. 1370-1371):

> "This is similar to the Ball amendment, dealing with jurisdictional strikes and secondary boycotts. It eliminates the injunctive process, the suspension of the Norris-LaGuardia Act, which I found was creating so much difficulty and opposition to the Ball amendment. It retains simply a right of suit for damages against any labor organization which undertakes a secondary boycott or a jurisdictional strike."

Senator Taft's amendment, the present Section 303 of the Labor Management Relations Act, was adopted. (93 Cong. Rec. 4874, 2 Leg. Hist. 1400.) After the Senate provisions had been approved by the House-Senate Conference Committee, Senator Taft stated:

> "The conferees rejected the broad prohibition of all kinds of strikes. They rejected the repeal of the Norris-LaGuardia Act. The provisions, regarding injunctions are exactly those which were in the Senate bill, and were approved by the Senate. The only strikes which are declared to be illegal are secondary boycotts and jurisdictional strikes. In such cases the injunction can be obtained only through the National Labor Relations Board. • • •." (93 Cong. Rec. 6445-6556, 2 Leg. Hist. 1544.)

The injunction issued in this case confirms the conclusion that the *Garmon* rule governs here. First, it bears repetition that the sole office of the injunction is to determine the comparative rights of "labor organizations" whose inducement of secondary boycotts § 8(b)(4) is designed to regulate, and "person engaged in commerce" whom that pro-

vision is designed to a certain point to protect. Second, while the ostensible basis for state court jurisdiction is the existence of a primary dispute with a foreign flag ship (which, therefore, is not a dispute in "commerce" for purposes of the NLRA under *Windward Shipping*), the injunction issued is not so limited. It prohibits all picketing "at or near [the Association] premises"; "any interfere[nce] by words or actions [with] any person or persons working for [the Association]"; "interfering with the operations of [the Association] in any manner"; "picketing directed at vessels with whom [the Association has] contractual relations"; and "interfering with the contractual relations existing or to exist between [the Association] and * * * vessels calling at the Port of Mobile." Thus, the injunction, in terms, reaches union action growing out of labor disputes wholly within the NLRA's boundaries, as well as the hybrid situation presented here. This invasion of the heartland of the Board's jurisdiction underlines the Alabama courts' lack of fidelity to the exclusive primary jurisdiction doctrine enumerated by this Court in *Garmon* and its progeny.

2. The First Amendment issue posed but not reached in *Windward Shipping* (see 42 U.S.L.Wk. at 4238 (Brennan, J., dissenting)) is whether the states may ban peaceful primary picketing and handbilling publicizing the substandard labor conditions of a foreign flag ship, and requesting the public not to patronize the vessel. This case, like *Windward* does not provide a proper occasion for final resolution of that question. For, the Alabama Supreme Court's rejection of the Union's first Amendment argument (App. pp. 16a-26a) is susceptible to two readings: one provides further support for the preemption argument

just developed; the other demonstrates that the injunction issued rests on the error of law corrected in *Thornhill* v. *Alabama*, 310 U.S. 88.

(a) There are references in the opinion which can be taken as meaning that the Alabama law concerning wrongful interference with another's business permits picketing to publicize a labor dispute even though that may result in an "incidental interference" to a third party's business, but prohibits such picketing if its "purpose or object" is to put direct pressure not only on the primary employer but also on that third party. (App. p. 20a; *id.* at 25a-26a) If that is the limit of the Alabama law, the law itself (as opposed to its possible misapplication) is validated by *Carpenters Union* v. *Ritter's Cafe*, 315 U.S. 769 and *IBEW* v. *NLRB*, 341 U.S. 694. Then, however, the Alabama law would, in all essential respects, parallel the federal law embodied in § 8(b)(4) of the NLRA. (Cf., *Operating Engineers*, 400 U.S. at 302-303.) And, as we have already seen in the Act, Congress has not only spoken on the extent to which neutral "persons engaged in commerce" shall be protected from activity by "labor organizations" designed to create a "secondary boycott"; in order to avoid the excesses in particular cases that led to enactment of the Norris-LaGuardia Act, the national legislature has determined that only the NLRB shall have the authority to secure an injunction against such activities.

(b) Insofar as the secondary boycott rationale just noted was not determinative, the Alabama Supreme Court's opinion is an expression of the view that the "valid state interest in the preservation of [its] local economy" and in the " 'avoidance of economic stagnation in the local community' caused by state activity," is a sufficient predicate

to enjoin picketing and handbilling publicizing a labor dispute as a wrongful interference with business relations. (App. p. 19a.) That view, of course, deprives picketing and handbilling by "workers seeking to challenge substandard working conditions, consumers protesting shoddy or overpriced merchandise, and minority groups seeking nondiscriminatory hiring policies" (cf., *Food Employees* v. *Logan Valley Plaza*, 391 U.S. 308, 324), of all constitutional protection. For, the object of any such publicity is to persuade those who agree, not to do business with the offending businessmen, and in that way to "interfere" with his business and the business of those who would otherwise deal with him.

This expansive view of the states' authority to ban peaceful communicative activity as an interference with business relations is precisely that which formed the predicate for the conviction reversed in *Thornhill*. There the Alabama courts had gone so far as to apply their law:

> "so as to prohibit a single individual from walking slowly and peacefully back and forth on the public sidewalk in front of the premises of an employer, without speaking to anyone, carrying a sign or placard on a staff above his head stating only the fact that the employer did not employ union men affiliated with the American Federation of Labor; the purpose of the described activity was concededly to advise customers and prospective customers of the relationship existing between the employer and its employees and thereby to induce such customers not to patronize the employer." (310 U.S. at 98-99; footnotes omitted.)

This Court noted that:

> "The statute as thus authoritatively construed and applied leaves room for no exceptions based upon

> either the number of persons engaged in the proscribed activity, the peaceful character of their demeanor, the nature of their dispute with an employer, or the restrained character and the accurateness of the terminology used in notifying the public of the facts of the dispute." (*Id.* at 99)

Because the state had swept with too broad a brush the Court invalidated its restraint on free speech, explaining:

> "The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment. • • • In the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution. • • • Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society.
>
> • • • •
>
> "The range of activities proscribed by [Alabama], whether characterized as picketing or loitering or otherwise, embraces nearly every practicable, effective means whereby those interested—including the employees directly affected—may enlighten the public on the nature and causes of a labor dispute. The safeguarding of these means is essential to the securing of an informed and educated public opinion with respect to a matter which is of public concern. It may be that effective exercise of the means of advancing public knowledge may persuade some of those reached to refrain from entering into advantageous relations with the business establishment which is the scene of the

dispute. Every expression of opinion on matters that are important has the potentiality of inducing action in the interests of one rather than another group in society. But the group in power at any moment may not impose penal sanctions on peaceful and truthful discussion of matters of public interest merely on a showing that others may thereby be persuaded to take action inconsistent with its interests. Abridgment of the liberty of such discussion can be justified only where the clear danger of substantive evils arises under circumstances affording no opportunity to test the merits of ideas by competition for acceptance in the market of public opinion. We hold that the danger of injury to an industrial concern is neither so serious nor so imminent as to justify the sweeping proscription of freedom of discussion embodied in [the Alabama statute]." (*Id.* at 101-105.)

The subsequent process of litigating elucidation summarized by Mr. Justice Frankfurter in *Teamsters* v. *Vogt*, 354 U.S. 284, resulted in a "realiz[ation] that the broad pronouncements, *but not the specific holding*, of Thornhill had to yield 'to the impact of facts unforeseen,' or at least not sufficiently appreciated." (*id.* at 289, emphasis added). For, in contrast to *Thornhill* the intervening cases were ones:

"In which a State had designed a remedy to meet a specific situation or to accomplish a particular social policy. These cases made manifest that picketing, even though 'peaceful,' involved more than just communication of ideas and could not be immune from all state regulation." (*Id.*)

But, since the "specific holding of *Thornhill*" retains its vitality, the Chief Justice has recently remanded that a state may not issue a temporary injunction against an

organization found to "protest various real estate tactics and activities generally known as 'blockbusting' or 'panic peddling,' prohibiting it "from passing out pamphlets, leaflets or literature of any kind, and from picketing, anywhere in the City of Westchester, Illinois," in pursuit of its objective of persuading a real estate broker "to sign an agreement whereby they would not solicit property, by phone, flyer, or visit, in the Austin community." (*Organization for a Better Austin* v. *Keefe*, 402 U.S. 415, 416-417.)

"This Court has often recognized that the activity of peaceful pamphleteering is a form of communication protected by the First Amendment. *E. g.*, Martin v. City of Struthers, 319 U.S. 141 (1943); Schneider v. State, 308 U.S. 147 (1939); Lovell v. Griffin, 303 U.S. 444 (1938). In sustaining the injunction, however, the Appellate Court was apparently of the view that petitioners' purpose in distributing their literature was not to inform the public, but to 'force' respondent to sign a no-solicitation agreement. The claim that the expressions were intended to exercise a coercive impact on respondent does not remove them from the reach of the First Amendment. Petitioners plainly intended to influence respondent's conduct by their activities; this is not fundamentally different from the function of a newspaper. See Schneider v. State, *supra;* Thornhill v. Alabama, 310 U.S. 88 (1940). Petitioners were engaged openly and vigorously in making the public aware of respondent's real estate practices. Those practices were offensive to them, as the views and practices of petitioners are no doubt offensive to others. But so long as the means are peaceful, the communication need not meet standards of acceptability.

"Any prior restraint on expression comes to this Court with a 'heavy presumption' against its constitutional validity. Carroll v. Princess Ann, 393 U.S. 175, 181

(1968); Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70 (1963). Respondent thus carries a heavy burden of showing justification for the imposition of such a restraint. He has not met that burden. No prior decisions support the claim that the interest of an individual in being free from public criticism of his business practices in pamphlets or leaflets warrants use of the injunctive power of a court." (*Id.* at 419)

And, there are "no prior decisions" supporting the position of the Alabama Supreme Court that the states have authority to issue a blanket injunction against peaceful picketing and handbilling by unions to publicize substandard working conditions on the bare ground that there is a "valid state interest in the preservation of [its] local economy (App. p. 19a).

CONCLUSION

For the above stated reasons the decision of the Supreme Court of Alabama should be reversed.

Respectfully submitted,

J. Albert Woll
General Counsel, AFL-CIO
Robert C. Mayer
Laurence Gold
736 Bowen Building
815 Fifteenth Street, N.W.
Washington, D. C. 20005

Thomas E. Harris
Associate General Counsel, AFL-CIO
815 Sixteenth Street, N.W.
Washington, D. C. 20006